

REMARKS AND INTERVIEW SUMMARY RECORD

Claims 1-23 are pending in the application. Claims 1-23 (but specifically Claims 1 and 13) were rejected under 35 USC § 101 as reciting non-statutory subject matter. Claims 1-23 were rejected under § 102(b) as anticipated by U.S. Pub. No. 2002/0106622 to Osborne. Applicant respectfully traverses both rejections with the arguments set forth below and hereinabove amends the claims to place the application in better condition for at least further examination and, Applicant believes, allowance. No new matter is entered.

Interview Summary Record

Applicant and the undersigned desired to have a telephonic interview with the Examiner subsequent to the filing of the March 13, 2007 response and conducted one telephonically on May 16, 2007. During that interview, the § 101 rejection of Claims 1 and 13 was discussed. The undersigned offered a response to the § 101 rejection similar to what was written in the March 13 Response. The Examiner indicated he would maintain the § 101 rejection. The undersigned proposed adding language to Claims 1 and 13 to overcome the § 101. The Examiner preliminarily indicated that the proposed language seemed to overcome the § 101 rejection. That proposed language appears in amended Claim 1 above; Claim 13 has been amended analogously. The undersigned wanted to discuss the § 102 rejections, however the Examiner indicated he would have to see what was submitted. Consequently, **Applicant is submitting the instant response and respectfully requests the Examiner telephone the undersigned prior to the issuance of a second Office Action.**

§ 101 Claims 1 and 13 are statutory

“Any new and useful process, machine, manufacture or composition of matter under the sun that is made by man” is statutory under 35 USC § 101. See MPEP § 2106(IV)(A). (All MPEP references are to 8th Ed., 5th Revision, Aug. 2006.) The invention must be useful, and it must be in one of the § 101 categories. Applicant submits that Claims 1-23 (especially

independent Claims 1 and 13) fulfill both requirements.

Must Be Useful

The claimed invention must be useful and accomplish a practical application. MPEP § 2106(II)(A) (citing *State Street*, 149 F.3d at 1373-4, 47 USPQ2d at 1601-2). MPEP § 2106(II)(B) instructs us to look to the specification to see how the invention is useful or what practical application it has (see p. 2100-6). The specification of the instant application affirms that Applicant's invention is useful and has real world value. See, e.g., specification at page 2, line 4 – page 3, line 14 for what is wrong with conventional technology, and see page 4, lines 6-8 and 12-16 for how Applicant's invention is superior and what real world value it has:

“By only transmitting test information, the instant invention makes it possible for unsophisticated local computers to communicate quickly and efficiently with the central server, even over low-speed connections such as dial-up service.”

“By separating the training program from the answers submitted by the employee, only the answer data and other test information need be transmitted to the server for processing. This eliminates the need for large bandwidth communications capabilities from the local computer, since the otherwise large training program remains locally resident and need not be transmitted at all.”

These are “specific, substantial, and credible,” further to MPEP §§ 2106(IV)(C)(2)(a), 2107. They are also “tangible and concrete,” further to MPEP § 2106(IV)(C)(2)(b)-(c). See also *State Street*, 149 F.3d at 1373-4, 47 USPQ2d at 1601-2. The claimed invention is thus useful.

Must Be § 101 Category

Section 101 recites the following permissible categories of invention: process, machine, manufacture or composition of matter. Both Claims 1 and 13 fit into one of these permissible categories. Claim 1 is a machine claim; it recites hardware, having a local computer, a program resident on the local computer, an interface, and a remote computer. The manner in which some of the hardware elements are connected to each other (e.g., how the remote and local computers communicate with each other) is also recited in the claim. Simply because the claim recites “a

training program” as one of the elements does not affect the patentability of the rest of the claim under § 101. If a computer program is being claimed as part of an otherwise statutory machine (as here), the claim remains statutory. See MPEP § 2106.01(I) at page 2100-18; see also *Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (2006)*, Annex IV, page 53. Claim 13 is a process claim, which is also statutory.

Thus, given that the invention is useful and the claims each fall into one of the accepted § 101 categories, Applicant respectfully requests that the § 101 rejection be reconsidered and withdrawn.

Applicant believes the claims as filed are statutory under § 101. However, Applicant hereinabove amends the claims to make more clear the tangible, real world application of the claimed system and method. Specifically, Applicant amends Claim 1 to include the subject matter of Claim 3, i.e., “a second interface enabling a manager to access said test information on said central server”, and that said managerial access is “dynamic” or in real time. Similarly, Claim 13 has been amended to include the step of “enabling a manager to access the test information from the central server in real time.” Both of these recitations find support in the specification at least at the following locations: page 5, lines 2-6; page 6, lines 12-14; and page 11, line 20 - page 12, line 5.

§ 102 Osborne does not teach or suggest claimed invention

The Examiner also rejected the claims on § 102 grounds in view of Osborne. Applicant respectfully traverses this rejection as well. The claimed invention requires real time uploading of test information. Claims 1 and 13 include the following language:

wherein **when** an employee interacts with said training program, said local computer transmits only the employee’s identifier and test information to said central server thereby allowing **dynamic** managerial oversight.

(Emphasis added.) The claim specifies that when the employee interacts with the training program (i.e., while the employee is interacting with the training program), the local computer transmits only the employee identifier and the test information to the central server (not certification results). Real-time communication allows for dynamic managerial oversight, which serves at least two specific purposes. First, it provides live data to management from anywhere in the world that they have internet connectivity (see, e.g., specification at page 5, lines 2-8; page 11, line 20 – page 12, line 3; page 12, line 19 – page 13, line 1; Fig. 2; see also Claim 5). This is absent from Osborne. Second, it enables the automatic control of the ability of a user to log on to the system based on current criteria (see, e.g., specification, page 10, lines 14-21). A program can be instantly available to a user, or conversely it can be made instantly unavailable –it is all controlled centrally by the server and based on the entering of the employee identifier at the beginning of the session. By contrast, Osborne teaches that an administrator must manually determine which training program the employee must take. (See Osborne at ¶ 0044.)

Indeed, Osborne teaches away from real-time communication, and its system only transmits information after a session or module is over and the employee is certified locally by the “individual training and certification unit 102.” At the end of a training and certification session, the results are loaded into a central database (Osborne, ¶ 0023). Results data transferred from individual training and certification units 102 to central management network 101 only after the completion of a training and certification session (Osborne, ¶ 0035). Finally, as shown graphically in Osborne in Fig. 3, box 306, the system uploads results data only after there are no remaining sessions determined in step 305. There is no real time sending of information from the local computer to the central server in Osborne.

The instant claimed invention has another, separately patentable feature neither taught nor suggested in Osborne: a novel/nonobvious anti-cheating mechanism that records the length of time spent on each test and/or each question (see specification, page 14, lines 3-18; Claim 12) . This is claimed in Claims 22 and 23, for example:

U.S. Patent Appl'n No. 10/812,674
Supplemental Amendment and
Interview Summary Record

22. A method of training employees via a hosted learning management training system according to Claim 13, further comprising the step of detecting employee cheating on a training program test by recording the employees' response time to each question.

23. A method of training employees via a hosted learning management training system according to Claim 22, said detecting step further comprising the step of comparing a given response time by one employee to a given question to other response times by other employees to the same question.

If most people taking a test require between 45 and 60 seconds to answer a question and one employee takes 5-10 seconds, a likelihood of cheating may be inferred (especially if that employee takes a much shorter period of time on many or all of the questions).

In view of the foregoing, Applicant respectfully submits that Claims 1-23 recite patentable subject matter and the application is in condition for allowance. **Applicant respectfully requests a telephonic interview with the Examiner to discuss any further changes that might be deemed necessary prior to the issuance of another Office Action.** Prompt and favorable action toward the issuance of a patent is earnestly solicited. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any additional required fee, except for the Issue Fee, for such extension may be charged to Deposit Account No.50-0932.

Dated: May 17, 2007

Respectfully submitted,



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